

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION**

SCOTT TURNAGE , CORTEZ D.
BROWN, DEONTAE TATE, JEREMY S.
MELTON, ISSACCA POWELL, KEITH BURGESS,
TRAVIS BOYD, TERRENCE DRAIN, and
KIMBERLY ALLEN on
behalf of themselves and all similarly
situated persons,

Plaintiffs,

v.

BILL OLDHAM, in his individual capacity and in his
official capacity as the Sheriff of Shelby County,
Tennessee; ROBERT MOORE, in his individual
capacity and in his official capacity as the Jail Director
of Shelby County, Tennessee; CHARLENE
MCGHEE, in her individual capacity and in her
official capacity as the Assistant Chief of Jail Security
of Shelby County, Tennessee; DEBRA HAMMONS,
in her individual capacity and in her official capacity
as the Assistant Chief of Jail Programs of Shelby
County, Tennessee; SHELBY COUNTY,
TENNESSEE, a Tennessee municipality; and TYLER
TECHNOLOGIES, INC., a foreign corporation,

Defendants.

**Civil Action No. 2:16-cv-02907-SHM-
tmp**

(Hon. Judge Samuel H. Mays)

**DEFENDANTS BILL OLDHAM, ROBERT MOORE, CHARLENE MCGHEE, AND
SHELBY COUNTY, TENNESSEE'S MOTION AND MEMORANDUM TO CONTINUE
HEARING**

COMES NOW Defendant Shelby County and the individual defendants (Shelby County
Defendants) and request a continuance of the hearing scheduled for tomorrow at 9:30 a.m.

The Court heard arguments regarding Plaintiffs' Motion to Compel on Wednesday, November 14, 2018. During the hearing, the Court discussed Plaintiffs' Motion to Compel and other discovery issues related to this lawsuit. The Court discussed the Plaintiffs' request and potential process to select, pull and review arrestees' jackets in the possession of Shelby County Government.

The Court discussed at length the process of determining how to proceed with Plaintiffs' requests. Toward the end of the November 14, 2018 hearing, Plaintiffs requested an opportunity to consult with their expert, determine a statistical analysis and random selection of the jackets and provide the information to the Defendants for consideration, (Ex. 1, pp. 110 – 114, Transcript excerpt from the November 14, 2018 Motion to Compel Hearing)

Plaintiffs' counsel made the following statements regarding providing the expert analysis to the Defendants:

. . . One is a random statistically-significant sample. We'll stick with my co-counsel on the statement we'd like to ask the statistician what that number is.

If for some reason we can't agree with the definition of "statistically significant," we can always present that narrow issue to the court in writing with affidavits from our respective experts. (Emphasis added) (Ex. 1, pp. 113, ll. 5 – 12)

Yesterday at 4:46 p.m., Plaintiffs' provided a copy of their expert's report and requested a number of cases. Plaintiffs state they intend to rely on their expert's report during the hearing on tomorrow. Plaintiffs did not provide Defendants an opportunity to review and discuss the definition of "statistically significant" with Plaintiffs prior to providing the expert's report as they stated during the November 14, 2018 hearing.

Defendants have not had ample opportunity to review the expert report and respond. The Plaintiffs had ample opportunity to provide the expert report in a timely manner. This hearing was initially scheduled for December 5, 2018. Due to the death of a former president, the hearing was rescheduled to December 13, 2018.

In the Court's Notice Re-Setting Hearing on Motion, the Court stated:

The parties are hereby notified that the Hearing on Plaintiff's Motion to Compel Production of Documents and Information [113] currently set for Wednesday, December 5, 2018 has been reset to Thursday, December 13, 2018 at 9:30 AM in Courtroom 6 - Memphis before Magistrate Judge Tu M. Pham. **Judge Pham requires that prior to the hearing, all parties must meet and confer in good faith regarding all issues raised in the motion.** All counsel who wish to be heard on the above motion must appear in person on the specified date and time.(smm) (Emphasis added)

Because Plaintiffs provided their expert's report one (1) business day prior to the hearing, Defendants have not had an opportunity to have the Plaintiffs' expert report reviewed by an expert or consult with the Plaintiffs prior to receiving their expert's report. The late notice of the expert's report places the Defendants at a disadvantage in a complex class action litigation considering statements made during the November 14, 2018 hearing.

Due to the Christmas and New Year's Holidays and schedules, the Defendants request a 30 day continuance of the hearing to consult with their expert and Plaintiffs' counsel regarding this issue.

WHEREFORE, PREMISES CONSIDERED, Shelby County Defendants respectfully request that the Court continue the hearing to Friday, January 11, 2019.

Respectfully submitted,

/s/ Odell Horton, Jr.

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Counsel for Shelby County Defendants

CERTIFICATE OF CONSULTATION

On December 12, 2018, I sent Frank Watson, counsel for the plaintiff, an e-mail regarding Defendants' Motion for Continuance. Mr. Watson by e-mail stated he does not consent to the motion.

/s/ Odell Horton, Jr.

CERTIFICATE OF SERVICE

The undersigned certifies that on December 12, 2018, a true and correct copy of the foregoing has been served upon the following counsel, via the Court's ECF filing system:

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/s/ Odell Horton, Jr.